

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:08-CR-99-FL-1

No. 5:11-CV-166-FL

CHRISTOPHER RAY PARRISH

Petitioner

v.

UNITED STATES OF AMERICA;

Respondent.

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ORDER

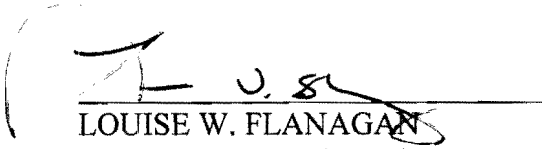
This matter comes before the court on petitioner's motion to vacate sentence pursuant to 28 U.S.C. § 2255 (DE # 52) and respondent's motion to dismiss (DE # 58). Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge William A. Webb entered a memorandum and recommendation ("M&R") wherein he recommends that the court grant petitioner's motion to vacate sentence pursuant to United States v. Simmons, 649 F.3d 237 (4th Cir. 2011), and grant respondent's motion to dismiss as to petitioner's ineffective assistance of counsel claims. No objections to the M&R have been filed, and the time within which to make any objection has expired. In this posture, the issues raised are ripe for ruling. For the reasons that follow, the court adopts the findings and recommendation of the magistrate judge.

On February 21, 2012, this court entered order adopting previous M&R in part, and granted petitioner's motion pursuant to 28 U.S.C. § 2255 also in part, where the parties agreed resentencing was appropriate under Simmons. After recommitting the instant motions to the magistrate judge for consideration of petitioner's ineffective assistance of counsel claims, the matter is again before the

court. The magistrate judge has carefully considered each of petitioner's claims of ineffective assistance of counsel, and petitioner lodges no objection to any part of the analysis. Upon a careful review of the M&R, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Because no objections have been filed, the court reviews the magistrate judge's findings and conclusions only for clear error, and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983).

Upon careful consideration of the magistrate judge's analysis, and where no objections were filed to the second M&R, the court ADOPTS in full the findings and recommendations of the magistrate judge. Accordingly, respondent's motion to dismiss (DE # 58) is GRANTED in part as to petitioner's ineffective assistance of counsel claims. As set forth in previous order, petitioner's motion to vacate is (DE # 52) is GRANTED as to the Simmons issue and DENIED in part as to the ineffective assistance of counsel claims. The court further orders the Clerk to set this matter for resentencing on **September ⁵ 4, 2012, at 9:30 a.m. in New Bern**. Absent a continuance, this order will constitute the only notice of hearing provided by the court. The court's calendar will be made available approximately three weeks prior to sentencing.

SO ORDERED, this the 10 day of June, 2012.


LOUISE W. FLANAGAN
United States District Judge